

Peter M. Panken, Esq. (5409)  
Epstein Becker & Green, P.C.  
250 Park Avenue  
New York, New York 10177  
(212) 351-4500  
Attorneys for Defendants  
Breton International, Inc. and William Cann

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X	
TROY FRANKLIN, Individually and on Behalf of All :	<b>ECF Case</b>
Other Persons Similarly Situated, :	
Plaintiffs, :	Case No. 06 CV 4877 (DC)
- against - :	
BRETON INTERNATIONAL, INC. (d/b/a, among :	<b>LOCAL CIVIL RULE 56.1</b>
others, APEX TECHNICAL SCHOOL), WILLIAM :	<b>STATEMENT OF</b>
CANN and JOHN DOES 1-10, Jointly and :	<b>UNDISPUTED MATERIAL</b>
Severally, :	<b>FACTS</b>
Defendants. :	
----- X	

Pursuant to Rule 56.1 of the Local Civil Rules for the Southern and Eastern Districts of New York, Defendant Breton International, Inc. (d/b/a, among others, Apex Technical School) (the "School") and Defendant William Cann ("Cann") (collectively "Defendants"), by their attorneys Epstein Becker & Green, P.C., submit the following Statement of Undisputed Material Facts in support of their Motion For Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

1. Plaintiff Troy Franklin ("Plaintiff") brings this action on behalf of himself and other similarly situated current and former employees of the School who elect to opt into this action on the grounds that they are entitled to overtime premium pay. (Complaint ¶¶ 1, 2 and 10).

2. Plaintiff was employed by the School as a teacher in its Automotive Technician Program. (Markowitz Aff. ¶ 8).

3. Plaintiff's primary duty as a teacher was to teach the students in the Automotive Technician Program how to become automotive technicians. Plaintiff's teaching duties included class work and individual instruction. He exercised discretion and independent judgment in evaluating students' work and assigning grades. (Markowitz Aff. ¶ 8).

4. Plaintiff was licensed as a teacher by the New York State Education Department, Bureau of Proprietary School Supervision under the University of the State of New York. (Markowitz Aff. ¶ 9 & Exs. B and C).

5. Plaintiff was employed by the School from December 27, 2004 until his termination on April 24, 2006. (Markowitz Aff. ¶ 11).

6. Plaintiff's salary as a teacher at the School was \$37,500 per annum, which equals \$721.15 per workweek. (Markowitz Aff. ¶ 12).

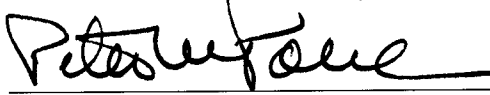
7. The School is licensed by the New York State Education Department and provides its students with courses of instruction including: (a) the Automotive Technician Program (900, 1050, 1200, 1350, or 1500 hours of instruction); (b) the Air Conditioning Refrigeration Appliances and Controls Program (900 hours of instruction); (c) the Combination Welding and Technology Program (900 hours of instruction); and (d) the Auto Body Repair Program (900 hours of instruction). (Markowitz Aff. ¶ 4).

8. The School is recognized by the U.S. Department of Education and the Board of Regents of the University of the State of New York National Program on Non Collegiate Sponsored Instruction. (Markowitz Aff. ¶ 6).

9. The School has been accredited since 1968 by the Accrediting Commission of Career Schools and Colleges of Technology and is a member of the Career College Association and the Coalition of New York State Career Schools. (Markowitz Aff. ¶ 5).

Dated: New York, New York  
August 21, 2006

EPSTEIN BECKER & GREEN, P.C.

By:   
Peter M. Panken (5409)

250 Park Avenue  
New York, New York 10177-1211  
(212) 351-4500  
Attorneys for Defendants  
Breton International, Inc. and William Cann

To: William C. Rand, Esq.  
Law Office of William Coudert Rand  
711 Third Avenue  
Suite 1505  
New York, New York 10017  
(212) 286-1425  
Co-Counsel  
Jeffrey M. Gottlieb, Esq.  
Berger & Gottlieb  
150 East 16<sup>th</sup> Street, Suite PHR  
New York, New York 10003  
(212) 228-9795  
Attorneys for Plaintiffs